

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 19491 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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AMRUTBHAI CHHANIYABHAI TANDEL THR' BORTHER -IN-LAW - Petitioner(s)
Versus
STATE OF GUAJRAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**Date : 24/11/2005****ORAL JUDGMENT**

1. Amrutbhai Chhaniyabhai Tandel thr' Brother-in-law- Thakorbbhai Dhirubhai Tandel-petitioner has

filed this habeas corpus petition challenging the order of detention dated 01.08.2005 passed by District Magistrate, Navsari city under sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as the 'PASA Act') which is illegal, null, void and also violative of Article 14,19,21 and 22 of the Constitution of India. The present petition was filed on 22.09.2005 and my learned brother Hon'ble Mr. Justice A.S. Dave issued RULE on 26.09.2005 which was made returnable after four weeks and that is why this matter has come up before this Court.

2. Heard, Ms. Banna Dutta, learned Advocate appearing on behalf of Mr. A.R. Shaikh , learned Advocate for the petitioner and learned A.G.P. in this behalf.

3. Learned Advocate for the petitioner has invited my attention to the order of detention and order of committal dated 01.08.2005. However, detenu was actually detained on 15.09.2005 and sent to District Jail, Rajkot.

4. Learned Advocate for the petitioner has invited my attention to the order of detention in which as the grounds of detention four offences have been shown as registered against the petitioner detenu. Out of four, three offences are being registered as C.R. No.3423 of 2004; C.R. No.3424 of 2004 and C.R. No. 3425 of 2004 at Navsari Prohibition police station dated 22.12.2004 punishable under Section 65A,E, 66(1)B, 81, 116B of the Bombay Prohibition Act. In connection with the first offence authority seized 96 bottles of country liquor manufactured at Daman valued at Rs.2,880/- and 12 bottles of Hawards-2000 beer valued at Rs.600/-. In connection with the second offence the authority seized 576 bottles of whisky manufactured at Daman valued at Rs.17,280/-. In connection with the third offence the authority seized 192 bottles of Royal whisky manufactured at Daman valued at Rs.5,760/-, 192 bottles of Crimpise whisky manufactured at Daman valued at Rs.5,760/- and 84 bottles of King Fisher beer valued at Rs.4200/-. Fourth offence being registered as C.R. No.1100 of 2005 at Navsari

Prohibition police station dated 25.05.2005 punishable under Section 65A,E, 66(1)B, 81, 116B of the Bombay Prohibition Act. In connection with that offence the authority confiscated 840 bottles of Royal whisky manufactured at Daman valued at Rs.27,360/-; 48 bottles of MacDowell whisky manufactured at Daman valued at Rs.4,080/-, 36 bottles of Greenlabel Whisky valued at Rs.4,320/-, 144 bottles of London Digene valued at Rs.4,320/-, 144 bottles of whisky manufactured at Daman, 133 bottles of Kingfisher beer valued at Rs.7,200/-. The authority, in all seized 1356 bottles of country made liquor valued at Rs.51,600/-.

5. Learned Advocate for the petitioner has further stated that in the order of detention it is stated that the petitioner-detenu is carrying on anti-social activities and on the basis of four registered offences he was termed as 'Bootlegger' within the meaning of Section 2(b) of the PASA Act. It was also stated that as said bootlegging activities of the detenu are dangerous and affecting maintenance of 'public order' and 'public health',

order of detention has been passed.

6. In support of this, learned Advocate for the petitioner has placed reliance on the judgment of the apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491. He has also place reliance on Division Bench judgment (Coram: Actg. C.J., C.K. Thakkar and K.M. Mehta,J.) of this Court in the case of Ashok Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Others reported in 2000 (1) G.L.H. 393 and also another Division Bench judgment of this Court in L.P.A. No.223 of 2000 (Coram: M.R. Calla & R.R. Tripathi,J.J.) decided on 22nd August, 2000 in the case of Ashok Makwana Vs. State of Gujarat. He has also relied on a recent judgment of this Court (Coram: K.M. Mehta,J.)in S.C.A. No.20420 of 2005 decided on 15.11.2005 in the case of Rajubhai Pratapbhai Panpatil Vs. Commissioner of Police, Surat City .

7. Heard, learned A.G.P. for respondent-detaining authority and he has tried to defend the

order of detention as well as grounds stated therein.

8. In view of the aforesaid facts and circumstances of the case, this Court is of the view that in this case only material remains is four criminal cases registered against the petitioner-detenu and on the basis of that it cannot be said that activity of the detenu has become a threat to the maintenance of 'public order' and 'public health'. The offences committed by the petitioner pertain to prohibition, to which I have already made reference in my earlier part of the judgment. Mere involvement of petitioner in bootlegging activity may not amount to dangerous activity by detenu and mere mention of them unless supported by any material, it cannot be said to be material and germane for the purpose of arriving at subjective satisfaction that activity of petitioner is prejudicial to the maintenance of 'public order' and 'public health'.

9. I have heard learned Counsel for both the parties and after perusal of the record, I am of the view that the detaining authority has passed the

order of detention without there being any cogent or credible material on record in this behalf. I have also considered factual and legal aspects emerging from the record of the petition and considered the rival submissions and the facts of the case and also in view of the decision of the apex Court in the case of Piyush Kantilal Mehta(Supra)as well as Division Bench judgments of this Court in the case of Ashok Jivaraj (Supra)and Ashok Makwana (Supra) and also recent judgment of this Court in the case of Rajubhai Pratapbhai Panpatil(Supra), the order of detention cannot be sustained and deserves to be quashed and set aside.

10. In the result, this petition is allowed and order of detention dated 01.08.2005 passed by District Magistrate, Navsari city is hereby quashed and set aside. Amrutbhai Chhaniyabhai Tandel-detenu is, therefore, ordered to be set at liberty forthwith if he is not required in connection with any other case by the authority. Rule is made absolute to the aforesaid extent with no order as to costs. D.S. permitted.

(K . M . MEHTA , J .)

Umesh/